IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.110 OF 2004

Chandya Shravan Naik ...Appellant.

V/s

State of Maharashtra ...Respondent

Mr. R.C. Makhija, appointed advocate for the appellant.

Mr. D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 8th February, 2005

ORAL JUDGEMENT:

1. The appellant was convicted by the Trial Court for having committed an offence punishable under section 376 of the Indian Penal Code and was sentenced to suffer R.I. for seven years and to pay fine of Rs 500/- and, in default of payment of fine, to suffer S.I. for fifteen days.

2. The prosecution case is that the accused on 2/6/2002 took the prosecutrix to the forest on the pretext of giving mangos to her and committed rape on her. The prosecutrix returned home and informed her mother who took her to the hospital and, thereafter, a complaint was lodged at Alibag Police Station. The accused was arrested. A charge-sheet was filed against him. The Trial Court convicted the appellant-accused for having committed an offence

punishable under section 376 of the Indian Penal Code. Against the said judgment and order, the appellant has preferred this appeal.

3. The prosecution has examined P.W-1 - Anjali Dalui, the mother of the prosecutrix. The prosecutrix - P.W.3 was also examined. Further, the doctors who examined the prosecutrix were also examined.

4. P.W.1 - the mother of the prosecutrix in her cross-examination has admitted that one day before the date of the incident, there was a meeting of the villagers in which it was decided to implicate the accused falsely by making an allegation of rape. She also admitted that there was a dispute between her and the accused. She has stated in the cross-examination that the accused used move in the forest by dressing like a woman. She has stated that this was not liked by villagers and they had a grudge against the accused. In view of this testimony of the complainant - P.W.1, the application was made by the APP to declare the witness as hostile. The Trial Court, however, did not declare the complainant as hostile but permitted the APP to ask the questions in cross-examination.

5. P.W. 3 - Surekha, the prosecutrix was also examined by the prosecution. However, she was not in a position to make any statement and, therefore, she was excused. Thus, there is no direct evidence against the accused. P.W. 1, on the contrary, has stated that there was a conspiracy to implicate the accused. P.W. 4 - Dr Sanjeev Shetkar who examined the prosecutrix has stated that her hymen was torn and there was bleeding from vagina. The prosecutrix was further examined by P.W. 5 - Dr. Pushpalata Shinde, the Gynaecologist who has also stated that the hymen was torn and there was bleeding from the vagina and that there was evidence to suggest that the girl had undergone forceful sexual intercourse.

6. The Chemical Analyser's report, however, did not support the prosecution case as no semen was found on the frock of the prosecutrix. The result of the chemical analysis was inconclusive regarding blood which was found on the clothes of the prosecutrix. In view of this evidence, it is difficult to come to the conclusion that the accused had committed rape on the prosecutrix. In the face of the evidence given by P.W.1 and in the absence of any statement by the prosecutrix that the accused had committed the said offence, it will have to be held that the prosecution

has miserably failed to prove that the accused had committed the said offence. The Trial Court, in my view, has clearly erred in relying on the evidence given by P.W.1 in her examination-in-chief without referring to her cross-examination. The Trial Court has based its findings on conjectures and surmises. The findings of the Trial Court, therefore, will have to be set aside. Accordingly, the following order is passed:-

O R D E R

. Appeal is allowed. Judgment and Order of the Trial Court is set aside. Accused is acquitted of the offence punishable under section 376 of the Indian Penal Code and he is directed to be released forthwith unless he is required in any other offence.

V.M. KANADE, J.